IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.36 OF 2006

The State of Maharashtra Applicant
versus
Pappu @ Suresh Budharimal Kalani
and others Respondents

Appearance :-

Shri S.R.Borulkar and D.S.Mhaispurkar, Public Prosecutors for State.

Shri Shirish Gupte, Senior Counsel with Shri Sudeep R. Pashola for respondents

CORAM : S.C.DHARMADHIKARI, J.
DATE OF RESERVING THE JUDGEMENT : 20.09.2006
DATE OF PRONOUNCING JUDGEMENT : 29.09.2006

PC :

1. This Criminal Revision Application is directed against an order passed by the learned Additional Sessions Judge, Kalyan below Exhibit-315 in Sessions Case No.218 of 1999.

2. The said application was preferred by the complainant State in the above sessions case contending that the accused Ramchandra Shitalaprasad Pande @ Bacchi Pande was arrested

by Khar Police Station, Mumbai in connection with CR No.159 of 1991. The said CR alleged offences punishable under sections 399, 402, 34, 120-B, 63, 67 and 387 of Indian Penal Code, Section 3 of Terrorist and Disruptive Activities Act so also Sections 25 and 27 of Arms Act. He had given willingness to give a confessional statement to the Deputy Commissioner of Police, Zone-VII on 19th March 1991. Accordingly, the said accused who is also an accused in the present sessions case, gave a confessional statement on 22nd March 1991. It is recorded by the Deputy Commissioner of Police, Zone-VII.

3. It was also contended that another accused Gabriel @ Baba Hansraj Mobin also consented to give his confessional statement to the Deputy Commissioner of Police, Zone-VII on 17th March 1991. Accordingly, his confessional statement was recorded by the DCP, Zone-VII. These two confessional statements were used in CR No.159 of 1991 of Khar Police Station. Evidence was led in TADA Case Nos.114 of 1991 and 114-A of 1991. These TADA cases ended in conviction of the accused which conviction was upheld by the Hon’ble Supreme Court. It was contended that certified copies of the above confessional

statements are filed in CR No.89 of 1990 of Vitthalwadi Police Station, Ulhas Nagar as a piece of evidence. The prosecution intends to rely on this piece of evidence. The copies of confessional statements are already supplied to the accused at the time of filing of charge sheet. It was contended by the State that these confessional statements are the foundation based upon which the evidence in the present sessions case would be led. Hence, in the interest of justice and for the sake of fair trial the prosecution be kindly allowed to call the original confessional statements from the record of TADA Case Nos.114 of 1991 and 114-A of 1991 from TADA Court, to lead evidence in this trial. This is the relief prayed in the application filed on 10th November 2005, which was numbered as Exhibit-315.

4. The accused filed their say to this application and the application was resisted by all the accused principally on the ground that confessions by accused Bacchi Pande and Gabrial in TADA cases are not admissible in the present sessions case. The reason is that the instant sessions case is not being tried under TADA Act. This application be, therefore, rejected.

5. Learned Judge heard both sides and by the impugned order rejected the application by observing that the law laid by the Hon'ble Supreme Court is clear. If confession is recorded in a case alleging offences under TADA Act, then by virtue of Section 15(1) of the TADA Act, such confessions are admissible notwithstanding anything contained in the Evidence Act and the Criminal Procedure Code. For such confessions to be admissible insofar as offences other than TADA Act, such as IPC, the confession can be used but the condition is that both cases namely TADA case and the case alleging offences under IPC, should be tried together. If they are not so tried, then, naturally, in the light of the provisions of Evidence Act and Cr.P.C., the confession is inadmissible in evidence. He made reference to the relevant decisions of Supreme Court and dismissed the application.

6. Shri Borulkar - learned Public Prosecutor submits that the learned Judge has specifically held in the impugned order that these confessions are a relevant piece of evidence. If they are so, then they must be allowed to be read in

evidence in the present sessions trial. He submits that the sessions trial is in connection with serious offences and it would be not only in the interest of justice but in public interest, that these confessions recorded in cases alleging commission of offences under TADA Act, are brought on record and read in evidence. Once they are relevant, then they should be held to be admissible in evidence. Shri Borulkar places reliance upon a decision of the Hon'ble Supreme Court reported in 1998-SCC (Cri)-936 (State of Gujarat Vs. Mohammed Atik and others).

7. He submits that all that the prosecution is praying is that these confessional statements be produced and insofar as the issue of their admissibility is concerned, the same can be decided at the time of trial. For all these reasons, the instant application be allowed and the order of learned Sessions Judge be quashed and set aside.

8. Shri Jha appearing for the applicants in other criminal application adopts arguments of Shri Borulkar and additionally submits that the applicant is a very material witness in the above sessions case. His relative has been put to

death and the offences alleged are serious. In the light of the history and antecedents of the accused and for a fair trial, these confessions be allowed to be produced so also read in evidence in the present sessions trial. Consequently, the application preferred by the State be allowed.

9. On the other hand, Shri Gupte - learned Senior Counsel appearing for the accused in all these matters submits that the order of learned Sessions Judge is not such as could be termed as vitiated by any error of jurisdiction or suffering from perversity so as to call for interference in this Court's revisional jurisdiction. Apart from the fact that it is an interlocutory order, the reasons assigned by the learned Sessions Judge are cogent and satisfactory. These reasons are based upon the principles laid down by Hon'ble Supreme Court in the decisions brought to the notice of learned Additional Sessions Judge. He has merely followed the principle and the decisions which are binding upon him. Once the Hon'ble Supreme Court has held that such confessions are inadmissible save and except fulfilment of conditions stipulated by Section 15(1) of TADA

Act, then conclusion of learned Additional Sessions Judge cannot be faulted. In these circumstances, these applications deserve to be dismissed.

10. For properly appreciating the rival contentions, a reference is necessary to Section 15 of the TADA Act and Section 25 of the Indian Evidence Act.

> **"Section 15 of TADA Act :-**
>
> 15. Certain confessions made to police officers to be taken into consideration.-
>
> (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person (or co-accused, abettor or conspirator) for an offence under this Act or rules made thereunder:
>
> Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused.
>
> (2) The police officer shall, before recording any confession under sub section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning

> the person making it, he has reason to believe that it is being made voluntarily."
>
> **Section 25 of Indian Evidence Act, 1872:**
>
> "25. Confession to police officer not to be proved.-
>
> No confession made to a police officer, shall be proved as against a person accused of any offence."

11. A bare look at Section 15 of the TADA Act would make it clear that certain confessions made to Police Officers can be taken into consideration. They shall be admissible in the trial of the person or co-accused, abettor or conspirator for an offence under the TADA Act or Rules made thereunder. However, co-accused, abettor or conspirator must be tried and charged in the same case together with the accused.

12. In a decision reported in AIR-2005-SC-1075 (Prakash Kumar @ Prakash Bhutto Vs. State of Gujarat with Abdulwahab Abdulmajid Shaikh and others Vs. State of Gujarat) a five Judge Bench of Hon’ble Supreme Court speaking through H.K.Sema, J., has observed that the confessional statement duly recorded under section 15 of TADA Act and Rules framed thereunder would continue to remain admissible for the offences under any

other law which were tried along with TADA offences under section 12 of the Act, notwithstanding that the accused were acquitted of the offences under TADA in the same trial. Further, the Hon'ble Supreme Court has held that section 15(1) is relateable to Section 12 of the Act and, therefore, section 15 has to be read with section 12 of the same. If they are so read, then the result would be as above. (See paras 16, 17, 19, 22, 26, 27, 28, 32 to 36, 39)

13. Section 25 of the Evidence Act is absolutely clear. No confession made to a Police officer shall be proved as against a person accused of any offence. This provision, it is not disputed by learned Public Prosecutor, would be applicable to the present trial. Shri Borulkar does not dispute that the trial in the TADA case has concluded in conviction of the accused before the Sessions Judge in the present trial. They have been convicted therein. The present case is being tried independently and not along with TADA case.

14. Once the above facts are not disputed, then, even if these confessions are relevant, the same are inadmissible in evidence. The legal position

summarised by the Hon’ble Supreme Court as above, is clear. The Hon’ble Supreme Court’s decision is binding on all of us. In such circumstances, I cannot accept the submission of Shri Borulkar that the impugned order suffers from an error of jurisdiction or is otherwise vitiated calling for my interference in revisional jurisdiction.

15. Consequently, the order is required to be upheld and revision applications must be dismissed.

16. Considering the submissions advanced before me and the nature of controversy involved, the learned Judge was right in his conclusion that the confessions being inadmissible in evidence at the instant trial, the application deserves to be rejected.

17. However, neither the view of the learned Judge nor my order upholding the same would in any manner affect or take away the right of the prosecution to rely upon the judgement in the said TADA case and produce the same on record in the subject sessions case. It would be open for the prosecution to rely upon the relevant provisions of the Indian Evidence Act including

Section 43 and apply to the Trial Court in that behalf. Equally, it would be open for the accused to urge that the said judgement has no relevance and is inadmissible in evidence in subject sessions case. With the above clarification, this revision application is dismissed.

(S.C.DHARMADHIKARI, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.354 OF 2006

Mohan Varialdas Bahrani Petitioner
versus
State of Maharashtra & others Respondents

Appearance :-

Shri Subhash Jha i/by Law Global for applicants.
Shri S.V.More, APP for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE OF RESERVING THE JUDGEMENT : 20.09.2006
DATE OF PRONOUNCING JUDGEMENT : 29.09.2006

PC :

1. In the light of the order passed in Criminal Revision Application No.36/2006 so also the arguments of petitioner-applicant in the writ

petition being common, no separate order is necessary and the writ petition stands disposed off in the light of judgement pronounced and delivered on Revision Application.

(S.C.DHARMADHIKARI, J.)